89-84

No. _____

Supreme Court, U.S.
FILED
JUL 17 1989
JOSEPH F. SPANIOL, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

JACK E. FLEMING,

Petitioner

vs.

DOUGLAS E. ANDERSON,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Submitted by:

Jack E. Fleming
3624 Citadel Drive North,
Suite 250
Colo. Spgs., Colo. 80909
(719) 598-5286

Petitioner is Pro Se.

QUESTIONS PRESENTED FOR REVIEW

1. Whether any of the Petitioner's five (5) claims for relief as stated in the complaint alleging violation and/or deprivation of certain federal constitutional rights and so noted by the U. S. Court of Appeals in its order and judgment (Appendix B) states a cause of action pursuant to Title 42 USC sec. 1983.

2. Whether the U. S. Court of Appeals "erred" when affirming the order of the District Court to dismiss this action for the lack of subject matter jurisdiction.

3. Whether the Petitioner, pro se, can legally file lawsuits in the federal court against state court judges, prominent law firms, and prominent attorneys pursuant to Title 42 USC sec. 1983 for alleged violation and/or deprivation of one's federal constitutional rights under the color of state law.

4. Whetner the District Court has jurisdiction pursuant to 28 USC 1331 and 28 USC

1343 to review state court orders issued and state court procedures used in a state court action to determine if any of the Petitioner's federal constitutional rights were violated and/or deprived from him during the state court litigation process in Fleming v. Kent pursuant to Title 42 USC sec. 1983 as so alleged in his complaint.

5. Whether the U. S. Court of Appeals denied the Petitioner procedural due process of law by not allowing the Petitioner the use of 10th Circuit Court Rule 33.2 Settlement Conferences before briefs were submitted to the court for determination as so stated in Rule 33.2.

6. Whether the U. S. Court of Appeals can legally grant an award of damages and double costs pursuant to FRAP Rule 38 and 28 USC sec. 1912 for the taking of a frivolous appeal without stating any findings of fact and conclusions of law to support their



award when the appeal was legally taken pursuant to FRAP Rule 3(a) and Rule 4(a)(1).

7. Whether the Petitioner, as a citizen of the United States all of his life, is actually covered by the U. S. Constitution and its amendments and is entitled to sue other parties and defend himself as a pro se litigant in any or all of the courts within the United States and its territories.

PARTIES TO PROCEEDINGS BELOW

The only parties to this proceeding in the court below are those indicated by the caption of this case.

TABLE OF CONTENTS

	Page No.
QUESTIONS PRESENTED FOR REVIEW	1
PARTIES TO PROCEEDINGS BELOW	3
OPINIONS OF COURTS BELOW	8
JURISDICTION	8
TABLE OF AUTHORITIES	5
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED	6
STATEMENT OF THE CASE	9
REASONS FOR GRANTING THE PETITION	20
CONCLUSION	23
CERTIFICATE OF SERVICE	26
APPENDIX	27
Appendix A	1
Appendix B	7
Appendix C	14

TABLE OF AUTHORITIES

Case	Page No.
Anderson v. State of Colorado 793 F2d 262 (10th Cir. 1986)	11, 12
England v. Louisiana State Board 375 US 411, 11 L Ed 2d 440, 84 S. Ct. 461 (1964)	14, 24
Garcia v. Wilson 731 F2d 640 (10th Cir. 1984)	15
In re the Marriage of Stroud 631 P2d 168 (Colo. S. Ct. 1981)	10, 11
Monroe v. Pape 365 US 167, 5 L Ed 2d 492, 81 S. Ct. 473 (1961)	16
Morgan v. City of Rawlins 792 F2d 975 (10th Cir. 1986)	13
Pulliam v. Allen 466 US 522, 80 L Ed 2d 565, 104 S. Ct. 1970 (1984)	17
State of Montana v. United States 440 US 147, 59 L Ed 2d 210, 99 S. Ct. 970 (1979)	14, 24
Verner v. State of Colorado 533 F. Supp. 1109 (D. Colo. 1982), affirmed 10th Cir (1983) 716 F2d 1352, cert. denied 466 US 960.	16

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Page No.

U. S. Constitution

First Amendment 17, 23

Fifth Amendment 17, 23

Fourteenth Amendment 17, 23

Statutes

42 USC sec. 1983 1, 2, 9, 10, 11, 14, 15, 16, 17, 20

28 USC 1331 1, 8, 9, 21

28 USC 1343 1, 8, 9, 21

28 USC 1912 2

Colorado Rules of Civil Procedure Rule 60(b)(3) 11

Federal Rules of Appellate Procedure Rule 3(a) 3, 19, 21

Federal Rules of Appellate Procedure Rule 4(a)(1) 3, 19, 21

Federal Rules of Appellate Procedure Rule 38 2

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

JACK E. FLEMING,

Petitioner,

vs.

DOUGLAS E. ANDERSON,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

The Petitioner, Jack E. Fleming, respectfully prays that a writ of certiorari issue to review the opinion of the United States Court of Appeals for the Tenth Circuit.

OPINIONS OF COURTS BELOW

Opinions of lower courts cited below:

Jack E. Fleming v. Douglas E. Anderson, Case No. 88-C-488 (Appendix A).

Jack E. Fleming v. Douglas E. Anderson, Case No. 88-1911 (Appendix B).

Jack E. Fleming v. Douglas E. Anderson, Case No. 88-1911 (Appendix C).

JURISDICTION

1. The jurisdiction of the U. S. District Court was invoked pursuant to 28 USC 1331 and 28 USC 1343. The order dismissing the Petitioner's action is dated May 10, 1988.

2. The date of the opinion and order of the U. S. Court of Appeals for the Tenth Circuit stating that the federal courts do not have jurisdiction to review state court judgments is dated March 6, 1989. The order denying Petitioner's request for rehearing and suggestion for rehearing en banc was entered by the Court of Appeals on April 17, 1989.

3. The Jurisdiction of this Court is invoked pursuant to 28 USC 1254.

STATEMENT OF THE CASE

On March 30, 1988, the Petitioner filed this action in the U. S. District Court for the District of Colorado pursuant to Title 42 USC sec. 1983, and the District Court had jurisdiction in the case pursuant to 28 USC 1331 and 28 USC 1343. The Petitioner alleged that his federal constitutional rights had been deliberately violated during the litigation process in the state court action known as Fleming v. Kent. As alleged in the Petitioner's complaint, he had been denied due process of law, equal protection under the law, and access to the courts when Respondent Judge Anderson refused to rule on the validity of Judge Cannon's order and judgment in Fleming v. Kent. The Petitioner supplied the U. S. District Court with all of the documentation (exhibits) needed to show and prove that he had indeed been denied and deprived of his federal constitutional rights as alleged in his

complaint. The only court in the United States to have jurisdiction over the alleged deprivation of federal constitutional rights is the U. S. District Court. The state trial court and the state appellate courts do not have jurisdiction over actions involving federal constitutional rights.

The Petitioner alleged that Respondent Judge Anderson violated the Petitioner's federal constitutional rights when he refused to rule on the Petitioner's Rule 60 (b)(3) motion pursuant to the Colorado Rules of Civil Procedure and an opinion stated by the Colorado Supreme Court. The Petitioner asked Judge Anderson to rule on the validity of Judge Cannon's order and judgment, but he absolutely refused to do so. Judge Anderson had jurisdictional powers to rule on Petitioner's motion pursuant to CRCP Rule 60(b)(3). In re the Marriage of Stroud 631 P2d 168 (Colo. 1981), the Colorado Supreme Court ruled as follows:

> Where motion to set aside judgment alleges that judgment is void, trial court has no discretion; judgment is either void or it isn't and relief must be afforded accordingly. Rules of Civil Procedure, Rule 60(b)(3).

In the Colorado Civil Rules Annotated, 2nd, Rule 60, Section 60.5, Discretion of the Court, it states as follows:

> Where the court has acted contrary to law in rendering judgment, there is no discretion involved in determining that a motion for relief should be granted, and the court is bound to grant the motion. See e. g. Marriage of Stroud 631 P2d 168 (Colo. 1981).

The U. S. District Court order issued in this case is in complete error. The Court of Appeals decision in Anderson v. State of Colorado 793 F2d 262 (10th Cir. 1986) does not apply, and the District Court knew or should have known that at the time of its ruling. Besides, this Court never ruled on the constitutionality or the content of Anderson v. Colorado, supra, because the appellant in this case never asked this Court to review that decision. So far,

the District Court dismissed a case filed pursuant to 42 USC 1983, which is an Act of Congress, that goes back more than one hundred (100) years and used as its legal authority a case that never had been reviewed by the U. S. Supreme Court. This type of action by the District Court is nothing less than an usurpation of power on the part of the court.

The Petitioner in this sec. 1983 action is questioning the quality, extensiveness, and/or fairness of procedures followed in Fleming v. Kent, so the circumstances are just not the same as in Anderson v. Colorado, supra. This part of the Petitioner's action was made very clear in his complaint. The District Court, the Court of Appeals and this Court have the duty and the jurisdiction to examine the quality, extensiveness, and/or fairness of procedures followed in the prior litigation in state court, and the redetermination of the issues by the court is warranted if such doubt exists.

The Petitioner alleged in his complaint and responses to the Respondent's motions to dismiss his doubt as to the quality, extensiveness, and fairness of procedures followed in Fleming v. Kent, but both the District Court and the Court of Appeals absolutely refused to redetermine the issues as mandated by the Court of Appeals in its own opinion in Morgan v. City of Rawlins 792 F2d 975 (10th Cir. 1986) and this Court's decision in State of Montana v. United States 440 US 147, 59 L Ed 2d 210, 99 S. Ct. 970 (1979). The Court of Appeals used this Court's decision in Montana v. U. S., supra, as the basic legal authority for its decision in Morgan v. Rawlins, supra, regarding its point of law about the policy of the redetermination of the issues. Now the Court of Appeals has reversed itself completely in this matter, and states that it does not have the proper jurisdiction to rule as requested by the Petitioner in this Title 42 USC Section 1983 action.

In England v. Louisiana State Board 375 US 411, 11 L Ed 2d 440, 84 S. Ct. 461 (1964), this Court ruled as follows:

> When a federal court is properly appealed to in a case over which it has jurisdiction, it is its duty to take such jurisdiction.
>
> The right of a party plaintiff to choose a federal court where there is a choice cannot be properly denied.
>
> In cases where, but for the application of the abstention doctrine, the primary fact determination would have been made by the Federal District Court, a litigant may not be unwillingly deprived of that determination; the possibility of appellate review by the Supreme Court of a state court determination may not be substituted against a party's wishes, for his right to litigate his federal claim in the federal courts.

The Petitioner had a perfect right to come to the District Court and file suit for the deprivation of his federal rights whether or not he had filed any appeals with the state appellate courts. That is the only reason that Congress enacted 42 USC 1983.

In State of Montana v. United States, supra, this Court ruled as follows regarding

the abstention doctrine and the policy of redetermining the issues:

> The abstention doctrine may not be used as a vehicle for depriving individuals of an otherwise cognizable right to have federal courts make factual determinations essential to the resolution of federal questions.
>
> The redetermination of issues is warranted is there is reason to doubt quality, extensiveness, or fairness of procedures followed in prior litigation.

The District Court and the Court of Appeals were under direct orders from this Court to not apply the abstention doctrine when a federal question was at hand, and that these same courts were to redetermine the issues when there was doubt regarding fairness of procedures used in the prior litigation. The Petitioner feels that he has not yet been afforded the benefits of this Court's rulings regarding those subjects.

In Garcia v. Wilson 731 F2d 640 (10th Cir. 1984), the Court of Appeals ruled regarding claims brought to the federal court pursuant to 42 USC 1983. The Petitioner

feels that he proved to both the District Court and the Court of Appeals that his federal constitutional rights had been denied him under the color of state law. All of those facts were stated and clearly established with exhibits in the Petitioner's complaint as filed in the District Court. In Monroe v Pape 365 US 167, 5 L Ed 2d 492, 81 S. Ct. 473 (1961), this Court ruled regarding the federal statute known as 42 USC 1983. In that decision, this Court made it very clear what the intent and use of the statute 42 USC 1983 was to be involving the alleged deprivation of one's federal constitutional rights. The Petitioner feels that his claims for relief stated several causes of action pursuant to 42 USC 1983 and did so beyond any doubt.

In Verner v. State of Colorado 533 F. Supp. 1109 (D. Colo. 1982), affirmed 10th Cir. (1983), 716 F2d 1352, cert. denied 466 US 960, the court stated that state officials may be sued in their personal

capacity for damages in a federal action because the Eleventh Amendment grants them no immunity even when they are acting in their official capacity. In Pulliam v. Allen 466 US 522, 80 L Ed 2d 565, 104 S. Ct. 1970 (1984), this Court ruled that Congress intended 42 USC 1983 to be an independent protection for federal rights and nothing suggested that Congress intended to expand the common-law doctrine of judicial immunity to insulate state judges completely from collateral review.

The federal constitutional rights of the Petitioner as secured by the U. S. Constitution, namely, Amendments 1, 5, 14 were deliberately violated by all Respondents as alleged. The Petitioner proved his case by submitting to the District Court all of the documents necessary to prove his points of law and establish beyond any doubt that his federal rights had indeed been violated as alleged.

The Petitioner also feels that he was

severly discriminated against when he was denied by the U. S. Court of Appeals the priviledges stated in Rules of Court for the 10th Circuit, Rule 33.2 Settlement Conferences. The rule reads as follows:

> Settlement conferences shall be conducted in all civil proceedings which do not seek relief from criminal conviction. Within 10 days after notice that the matter has been set for oral argument, or after notice that the court intends to submit the matter on the briefs, counsel for the appellant/petitioner shall initiate a conference with counsel for the appellee/respondent regarding prospective settlement of the issues of appeal.

The Petitioner was never given the opportunity to try and settle the issues on appeal with the Respondents. The U. S. Court of Appeals issued its ruling on March 7, 1989 before any notice to attempt to settle was given to the Petitioner. Secondly, the opinions in this case, 88-1911, 88-1913 and 88-1918 were all treated the same. These opinions were all written by the same three (3) circuit judges, all written within a three (3) day period, and all four (4)

opinions read almost word for word throughout the opinion. The Petitioner feels that he has been severely discriminated against because he feels that he is entitled to have his cases ruled on by more than the same three (3) judges. The Petitioner feels that the Court of Appeals committed severe judicial discrimination against the Petitioner because the court should have given at least two (2) cases to other judges to see if the opinions of those judges would have been the same.

The Petitioner's appeal in this case was filed in good faith and as a matter of law pursuant to FRAP Rule 3(a) and Rule 4(a)(1). The Petitioner filed this appeal and proceeded with this appeal because he felt that the District Court had "erred" when it dismissed the Petitioner's sec. 1983 action for the reasons stated in the District Court's order. The Petitioner felt that his appeal was the only and correct way to correct errors made by the District

Court. The Petitioner does not believe that his appeal in this case is legally frivolous. This Court must not allow the precedence to be set that pro se litigants cannot appeal their cases to the 10th Circuit without the fear of being assessed damages and double costs because they exercised their constitutional right of appeal, which is a form of the right of access to the courts.

REASONS FOR GRANTING THE PETITION

1. All of the Petitioner's claims for relief stated causes of action in this case pursuant to Title 42 USC 1983. Petitioner was denied access to the courts by both the District Court and the U. S. Court of Appeals.

2. It has been established by this Court that Title 42 USC 1983 can be used to legally file suit against state court judges and other prominent judicial people including attorneys who are alleged to have violated one's federal constitutional rights.

3. The U. S. Court of Appeals "erred" when it affirmed the order of the District Court. The U. S. District Court did have the proper jurisdiction to hear Petitioner's claims for relief pursuant to 28 USC 1331 and 28 USC 1343.

4. This Court must allow certiorari in this case because the Petitioner's rights were violated by the Respondents in this action along with the District Court and the U. S. Court of Appeals.

5. The U. S. Court of Appeals denied the Petitioner his procedural due process rights by not allowing the Petitioner the use of 10th Circuit Court Rule 33.2, namely, Settlement Conferences before briefs were submitted to the court for determination.

6. The appeal to the U. S. Court of Appeals was not legally frivolous. The Petitioner's appeal was filed in good faith and as a matter of law pursuant to FRAP Rule 3(a) and Rule 4(a)(1). The U. S. Court of Appeals failed to state findings of fact and

conclusions of law to support its ruling that the appeal was legally frivolous. The Respondents in this case are not entitled to damages and double costs as so awarded by the U. S. Court of Appeals.

7. To deny this petition for certiorari would mean that the Petitioner is not covered by the U. S. Constitution. The District Court, the U. S. Court of Appeals and the Respondents have all deprived the Petitioner of certain of his federal constitutional rights during the litigation process. This Court must restore those rights. It cannot be allowed to be established that the federal courts can permanently deprive one of his federal constitutional rights. This will set a precedence that only a few within the United States would really want to be set. A person must be allowed to go to court pro se, and during the litigation process that follows, that person cannot be deprived of one or more of their federal consti-

tutional rights by the federal courts or any other courts within the United States and its territories. That must be an absolute mandate proclaimed by this Court in this case. This mandate must become the law of the land.

CONCLUSION

The only real question in this petition for this Court to determine is whether the Petitioner is covered by all of the individual rights, liberties and priviledges as stated in the U. S. Constitution and its amendments, namely, the First Amendment, the Fifth Amendment and the Fourteenth Amendment. The Petitioner was born a citizen of the United States of America and has lived in this country all of his life. It appears to the Petitioner that so far all of the lower courts, both state and federal, believe that the Petitioner is not covered by the U. S. Constitution. If the Petitioner, as a citizen of the United States of America, is indeed covered by all

of the rights, priviledges and liberties as so stated in the U. S. Constitution, then this Court must grant certiorari in this case. A denial of this petition would affirm the District Court order, affirm the order and judgment of the U. S. Court of Appeals, and affirm all state court orders and procedures that violated the Petitioner's federal constitutional rights, and establish once and for all, that the Petitioner is just not covered by the U. S. Constitution.

This Court must now come into this case and accept jurisdiction as should have been done by the District Court and the U. S. Court of Appeals as so stated by this Court in England v. Louisiana State Board, supra. This Court must then wipe away the stigma of the abstention doctrine left by the District Court and the Court of Appeals and redetermine all of the issues in this case as mandated by its own opinion in State of Montana v. United States, supra. This

Court must do this because all other lower courts have refused to do so. This Court must now determine if the Petitioner's federal constitutional rights were ever violated, and if so, must **reinstate** these rights and remand this case back to the District Court for a trial for damages pursuant to Title 42 USC sec. 1983.

The Petitioner respectfully requests that this Court grant certiorari in this case and that this Court decide once and for all whether the Petitioner, as a citizen of the United States, is truly covered by the U. S. Constitution and all of its respective amendments as a citizen and also as a pro se litigant.

Respectfully submitted,

Jack E. Fleming

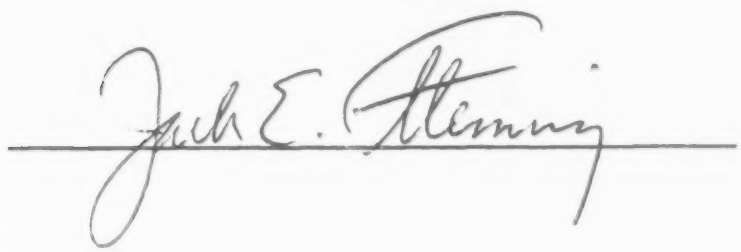
Jack E. Fleming, Petitioner
3624 Citadel Drive North, # 250
Colo. Sprgs., Colo. 80909

Petitioner is Pro Se.

CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and correct copy of the Petitioner's petition for Writ of Certiorari, postage prepaid, this 11th day of July, 1989 to:

Gregg E. Kay, Esquire
First Assistant Attorney General
1525 Sherman Street, 3rd Floor
Denver, Colorado 80203



APPENDIX

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 88-C-488

JACK E. FLEMING,

Plaintiff,

v.

Douglas E. Anderson,

Defendant.

ORDER

CARRIGAN, J.

Pro se plaintiff Jack Fleming commenced this action pursuant to 42 U.S.C. 1983 alleging that the defendant Douglas E. Anderson violated his constitutional rights.

Plaintiff alleges that jurisdiction exists under 42 U.S.C. 1983, and the First, Fifth and Fourteenth Amendments to the United States Constitution. These provisions, however, do not authorize federal jurisdiction. Nevertheless, if the plaintiff has properly alleged a 1983

claim, then jurisdiction would colorably exist under 28 U.S.C. 1331 and 1343.

The complaint alleges the following facts: On December 18, 1985, the plaintiff filed a legal malpractice lawsuit in state District Court for El Paso County, Colorado, against Stanley C. Kent and his law firm. Judge Joseph A. Cannon was assigned to that case. On May 27, 1986, Judge Cannon dismissed the lawsuit. Subsequently, the defendant Judge Douglas E. Anderson replaced Judge Cannon.

The complaint further alleges that on January 7, 1988, the plaintiff filed a motion for relief from the order dismissing his malpractice action. Judge Anderson denied the plaintiff's motion. Plaintiff then filed a motion for reconsideration that also was denied by Judge Anderson. The complaint alleges that Judge Anderson's actions violated the plaintiff's constitutional rights.

Currently pending is the defendant's motion to dismiss pursuant to Rules 12(b)(1) and 12(b)(6), Fed. R. Civ. P. The parties have briefed the issues and oral argument would not materially assist my decision.

In reviewing the sufficiency of a complaint when tested by a motion to dismiss, I must accept as true the complaint's allegations and view them in a light most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232,236 (1974). The complaint must stand unless it appears beyond doubt that the plaintiff has alleged no set of facts that would entitle him to relief. Conley v. Gibson, 355 U.S. 41,45-46 (1957).

Defendant contends that the complaint and this action must be dismissed because, among other reason, a federal district court has no authority to review final judgments of a state court in judicial proceedings. This argument

was fully addressed in my order in Jack Fleming, et al. v. William E. Rhodes, Case No. 88-C-487 (D. Colo. May 10, 1988). There I dismissed this same plaintiff's similar complaint and action for lack of subject matter jurisdiction.

The reasoning in Rhodes is fully applicable to the present action, and I therefore adopt the rationale of the Rhodes order as governing this case. Accordingly, I hold that this curt lacks subject matter jurisdiction over the plaintiff's claims.

Moreover, I find and conclude that this action is frivolous and that the plaintiff has filed it in violation of Rule 11, Fed. R. Civ. P. and 28 U.S.C. 1927. Therefore the defendant is entitled to an order that the plaintiff pay his attorney's fees and costs in a reasonable amount. Counsel and the parties shall confer within 11 days in an effort to agree upon a reasonable amount to be paid by the plaintiff

for the defendant's attorney's fees and costs. Upon agreement, the defendant shall report to the court in writing the fact of agreement and the amount agreed. If all issues cannot be agreed upon, the defendant shall report the status and request an expedited hearing to decide all matters in dispute.

The parties are admonished that additional attorney's fees and costs may be awarded for bad faith delay or failure to agree to reasonable proposals to finalize this matter.

Accordingly, IT IS ORDERED that:

(1) Defendant's motion to dismiss is granted;

(2) The complaint and this action are dismissed with prejudice;

(3) Plaintiff shall pay the defendant's reasonable attorney's fees and costs as provided above; and

(4) Defendant shall submit, for consideration by the court, an amended order for judgment to be signed by the judge, and a judgment to be signed by the clerk of the court.

Dated at Denver Colorado, May 10, 1988.

BY THE COURT:

_____

JIM R. CARRIGAN, JUDGE

UNITED STATES DISTRICT COURT

APPENDIX B

APP 7

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT
UNITED STATES COURTHOUSE
DENVER, COLORADO 80294

Robert L. Hoecker (303)844-3157
Clerk March 6, 1989 FTS 564-3157

Mr. Gregg E. Kay
Office of the Attorney General
State of Colorado
1525 Sherman Street
Third Floor
Denver, CO 80203

Mr. Jack E. Fleming
3624 Citadel Drive North
Suite 250
Colorado Springs, CO 80909

Re: 88-1911, Fleming v. Anderson
(Lower docket: 88-C-488,)

Dear Mr. Manspeaker:

The court's order and judgment was filed in the subject case today. A copy of the order and judgment is enclosed for all parties.

In accordance with Fed. R.App. P. 41, I enclose for the clerk of the trial court, or for the named agency, a certified copy of the order and judgment, which constitutes the mandate. By

direction of the court, the mandate shall be filed immediately in the records of the trial court or agency. I also enclose for the clerk of the trial court, or for the named agency, a mandate receipt. Please sign this receipt and return it to this office.

Please call this office if you have questions.

Sincerely,

ROBERT L. HOECKER, Clerk

RLH: kmh

enclosure

cc: Honorable Jim R. Carrigan, District Judge.

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

JACK E. FLEMING,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	No. 88-1911
	)	(D.C. No. 88-C-488)
DOUGLAS E. ANDERSON,	)	(D. Colo.)
	)	
Defendant-Appellee.	)	

ORDER AND JUDGMENT*

Before ANDERSON and TACH, Circuit Judges, and ROGERS, District Judge.**

**The Honorable Richard D. Rogers, United States District Judge for the District of Kansas, sitting by designation.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir.R. 34.1.9. The cause is therefore ordered submitted without oral argument.

*This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th cir. R. 36.3.

Plaintiff commenced this action pursuant to 42 U.S.C.1983 against a state court judge, alleging defendant entered an order in a state court action in violation of plaintiff's constitutional rights. In his federal complaint, plaintiff asserted five 1983 claims for relief, alleging defendant's denial of plaintiff's state court motion for relief from judgment, made pursuant to Colo. R.Civ. P. 60(b)(3), violated plaintiff's right to due process; violated plaintiff's first amendment right of access to the courts; amounted to gross negligence; denied plaintiff equal protection of the laws; and amounted to an abuse of judicial

process. As relief, plaintiff sought declaratory and injunctive relief and damages.

The district court dismissed plaintiff's claims pursuant to Fed. R. Civ. P. 12(b) for lack of subject matter jurisdiction and awarded defendant attorney's fees. Plaintiff filed a motion for reconsideration, which was denied. Plaintiff appeals the dismissal of his claims.

A federal district court does not have authority to review state court judgments where, as in this action, the relief sought is in the form of appellate review. Anderson v. Colorado, 793 F.2d 262, 263 (10th Cir. 1986); Van Sickle v. Holloway, 791 F.2d 1431, 1436 (10th Cir. 1986); see District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983). The district court properly dismissed plaintiff's claims for lack of subject matter jurisdiction.

Defendant moved for sanctions on appeal. Plaintiff has had an opportunity to respond to this request.

> Courts have the inherent power to impose a variety of sanctions on...litigants...in order to regulate their docket, promote judicial efficiency, and deter frivolous filings. See, e.g., Roadway Express, Inc. v. Piper, 447 U.S. 752, 764-67...(1980); Link v. Wabash R. Co., 370U.S.626, 632...(1962); Whitney v. Cook, 99 U.S. (9 Otto) 607...(1878). In addition, Fed R. App. P. 38 and 28 U.S.C. 1912 provide that a court of appeals may award just damages and single or double costs if the court "determine(s) that an appeal is frivolous" or brought for purposes of delay. This court has imposed attorney's fees and double costs for the taking of frivolous appeals in other contexts. See, e.g., United States v. Rayco, Inc., 616 F.2d 462, 464 (10th Cir. 1980.

Stafford v. Commissioner, 805 F2d 895, 896 (10th Cir. 1986; Stafford v. Commissioner, 805 F.2d

893, 894-95 (10th Cir. 1986). In light of plaintiff's legally frivolous appeal, an award of damages and double costs is justified.

The judgment of the United States District Court for the District of Colorado is AFFIRMED, and the case is REMANDED to the district court to determine the amount of sanctions to be awarded for taking a legally frivolous appeal. The district court may look to the principles that have evolved in the interpretation of Rule 11 in assessing the amount of the sanction awarded pursuant to Rule 38 and 1912. See Atkinson v. O'Neill, __ F.2d ___, No. 88-1132, slip op. at 4-5 (10th Cir. filed Feb. 10, 1989); Mullen v. Household Bank-Federal Sav. Bank, __ F.2d __, No. 87-1335, slip op. at 5 (10th Cir. Filed Feb 10 1989).

The mandate shall issue forthwith.

ENTERED FOR THE COURT

PER CURIAM

APPENDIX C

APP 14

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT
UNITED STATES COURTHOUSE
DENVER, COLORADO 80294

Robert L. Hoecker (303)844-3157
Clerk April 17, 1989 FTS 564-3157

Mr. Gregg E. Kay
Office of the Attorney General
State of Colorado
1525 Sherman Street
Third Floor
Denver, CO 80203

Mr. Jack E. Fleming
3624 Citadel Drive North
Suite 250
Colorado Springs, CO 80909

Re: 88-1911, Fleming v. Anderson
(Lower docket: 88-C-488,)

Dear Counsel and Mr. Fleming:

Enclosed is a copy of an order entered today in the captioned case.

Please call this office if you have questions.

Sincerely,

ROBERT L. HOECKER

Clerk

RLH:kas

Enclosure

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

JACK E. FLEMING,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	No. 88-1911
	)	
DOUGLAS E. ANDERSON,	)	
	)	
Defendant-Appellee.	)	

ORDER

Before HOLLOWAY, Chief Judge, MCKAY, LOGAN, SEYMOUR, MOORE, ANDERSON, TACHA, BALDOCK, BRORBY, EBEL, Circuit Judges, and ROGERS, District Judge.*

*The Honorable Richard D.Rogers, United States District Judge for the District of Kansas, sitting by designation.

This matter is before the court on appellant's petition for rehearing with suggestion for rehearing en banc.

The material submitted by appellant have been reviewed by the members of the hearing panel, who conclude that the original disposition was correct. Accordingly, the petition is denied on the merits.

The petition having been denied on the merits by the panel to whom the case was submitted, the petition for rehearing with suggestion for rehearing en banc was transmitted

to all the judges of the court in regular active service in accordance with Rule 35(b) of the Federal Rules of Appellate Procedure. No member of the hearing panel and no judge in regular active service on the court having requested that the court be polled on rehearing en banc, Rule 35, Federal Rules of Appellate Procedure, the suggestion for rehearing en banc is denied.

Entered for the Court

ROBERT L. HOECKER, CLERK